

APPEAL NO. 021155
FILED JULY 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 22, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

The hearing officer's decision is reversed and the case is remanded to the hearing officer.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The good faith and direct result criteria are in dispute. The claimant claimed he had no ability to work as a result of his compensable injury during the qualifying periods for the 9th and 10th quarters. The qualifying period for the 9th quarter was from May 3, 2001, through August 1, 2001, and the qualifying period for the 10th quarter was from August 2, 2001, through October 31, 2001.

Section 408.151 pertains to medical examinations for SIBs. According to the preamble to Rule 130.110 at 24 Tex. Reg. 10339 (1999), this rule was adopted in response to the enactment of Section 408.151. The Texas Workers' Compensation Commission (Commission) appointed a designated doctor in this case to determine the claimant's work status. The designated doctor's report is dated October 30, 2001, which was the next to the last day of the qualifying period for the 10th quarter. No evidence was presented as to when the Commission received the designated doctor's report. It appears from the hearing officer's decision that the hearing officer gave presumptive weight to the designated doctor's report in reaching her decision that the claimant is entitled to SIBs for the 9th and 10th quarters. The carrier contends that the hearing officer erred in giving presumptive weight to the designated doctor's report because it would have arrived at the Commission sometime after the qualifying period for the 10th quarter had expired.

In Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002, the Appeals Panel noted that Rule 130.110 provides, in part, that "The presumptive weight afforded the designated doctor's report shall begin the date the report is received by the Commission. . . ." The Appeals Panel also stated:

The preamble to Rule 130.110 states: "The rule also establishes the starting date of the presumptive weight afforded the designated doctor's report as the date the Commission receives the designated doctor's report and also establishes the timeframe that the presumptive

weight continues. By establishing the starting date of the presumptive weight afforded the doctor's report, the presumptive weight will only be applicable to the qualifying period in which the report was received by the Commission."

In addition, in Appeal No. 020041-s, the Appeals Panel noted that in Appeal No. 011564, decided August 21, 2001, one of the reasons the Appeals Panel had held that the designated doctor's report was not entitled to presumptive weight in that case was because it was received by the Commission after the qualifying period for the quarter in issue, and that Texas Workers' Compensation Commission Appeal No. 002788, decided January 11, 2001, had held that a hearing officer was correct in not giving presumptive weight to the designated doctor's report because it was not filed with the Commission until after the end of the qualifying period for the quarter in issue.

In the instant case, the designated doctor's report could not have been received by the Commission during the qualifying period for the 9th quarter because it is dated after the date that qualifying period ended, and there is no evidence that the Commission received the designated doctor's report during the qualifying period for the 10th quarter. Consequently, the hearing officer erred in giving presumptive weight to the designated doctor's report. The hearing officer's decision is reversed and the case is remanded for the hearing officer to make findings of fact regarding the elements in Rule 130.102(d)(4), conclusions of law, and a decision on whether the claimant is entitled to SIBs for the 9th and 10th quarters. We note that in Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000, the Appeals Panels stated that "in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record."

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge